

NICHOLAS W. BROWN
Attorney General
EMILY C. NELSON
BENJAMIN SEEL
Assistant Attorneys General
Attorney General of Washington
Wing Luke Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
206-464-7744

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,

Plaintiff,

v.

ADAMS COUNTY SHERIFF'S
OFFICE, ADAMS COUNTY

Defendants.

NO. 2:25-cv-99

STATE OF WASHINGTON'S
OPPOSITION TO MOTION
TO DISMISS "ADAMS
COUNTY SHERIFF'S
OFFICE"

JUNE 10, 2025
With oral argument:
2:00 p.m., Spokane

PLAINTIFF'S OPPOSITION TO
MOTION TO DISMISS THE
ADAMS COUNTY SHERIFF'S
OFFICE

ATTORNEY GENERAL OF WASHINGTON
CIVIL RIGHTS DIVISION
800 FIFTH AVENUE, SUITE 2000
SEATTLE, WA 98104
(206) 464-7744

I. INTRODUCTION

Adams County and the Adams County Sheriff's Office have routinely violated the Keep Washington Working Act (KWW) by, among other things, unlawfully holding people in custody based solely on their immigration status, enabling federal immigration authorities to question individuals in their custody, and sharing personal, nonpublic information about hundreds of Washingtonians with federal immigration officials. While it is true that Defendants are collectively responsible for this pattern of unlawful conduct, many of the violations involve Sheriff's Deputies improperly abusing their law enforcement authority. Defendants now seek to dismiss the Sheriff's Office from the case entirely, arguing that it is not capable of being sued under Washington law. They are wrong.

Adams County has expressly disclaimed any ability to supervise the Sheriff's Office's operations. This includes the supervision necessary to ensure compliance with KWW and provide the complete and effective relief sought by the State. Because Defendants' Motion misconstrues the law and deliberately ignores key allegations in the State's detailed, well-pled complaint, it should be denied.

But the Court need not resolve the Motion at all. The State has also filed a Motion for Remand because Defendants' removal was improper. ECF No. 4. "Because subject matter jurisdiction is a threshold question for the federal courts," the court should address the Remand Motion first and send this state-law

1 case back to state court where it belongs. *See Washington v. Greyhound Lines,*
 2 *Inc.*, No. 2:20-CV-00209-SAB, 2020 WL 4918011, at *1 (E.D. Wash. Aug. 21,
 3 2020).

4 II. FACTUAL AND PROCEDURAL BACKGROUND

5 On March 10, 2025, the State sued Adams County and the Adams County
 6 Sheriff's Office in Spokane County Superior Court for violating multiple
 7 provisions of KWW. *See* ECF No. 1-2 (Complaint) ¶¶ 4.1–4.56. Under KWW,
 8 state and local law enforcement are prohibited from using local resources and
 9 authority for purposes of civil immigration enforcement, because that is the
 10 responsibility of the federal government. Complaint ¶¶ 4.21–4.30; Wash. Rev.
 11 Code §§ 10.93.160(4)-(8). As outlined in the State's Complaint, Defendants have
 12 repeatedly engaged in conduct that violates KWW. Complaint ¶¶ 5.2.1–5.2.7.

13 Adams County is responsible for the operations and actions of the Adams
 14 County Sheriff's Office and its employees. *Id.* ¶¶ 2.5–2.6. Despite this, the
 15 Adams County Board of Commissioners has taken the position that the County
 16 does not have supervisory authority over the operations of the Sheriff's Office or
 17 over Adams County Sheriff Dale Wagner, who is the elected Sheriff of Adams
 18 County and directs the operations of the Adams County Sheriff's Office. *Id.*
 19 ¶ 4.40. That lack of authority and control over the operations of the Sheriff's
 20 Office became evident during the State's attempts to negotiate a pre-litigation
 21 resolution of Defendants' KWW violations.
 22

For instance, in October 2023, Adams County’s legal representative, Prosecutor Randy Flyckt, represented to the Attorney General’s Office (AGO) “that Sheriff Wagner had finally directed jail and dispatch staff to stop emailing in custody lists to federal immigration authorities,” “agreed to cease honoring civil immigration detainers, unless accompanied by a judicial warrant, and was working on the policy updates the AGO had requested he make.” *Id.* ¶ 4.43. But Prosecutor Flyckt’s formal representations to the AGO turned out to diverge from the true behavior of the Sheriff’s Office, because, “despite these representations, Sheriff’s Office staff continued to send in custody reports to federal immigration authorities” and, when “the Sheriff’s Office updated its Policies Manual in December 2023,” it did so “without making any of the revisions requested by the AGO.” *Id.* ¶ 4.44.

Because the State was unable to secure compliance with KWW after years of trying, it was forced to seek redress through the courts. *See generally* Complaint. Defendants improperly removed the case on March 28, 2025, *see* ECF No. 1, and the State has moved for remand because the Court lacks jurisdiction over its single state law claim. *See* ECF No. 4. The State’s Motion to Remand is pending.

III. ARGUMENT

Dismissal under Rule 12(b)(6) is appropriate “only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” *Mendonado v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir.

2008). In ruling on a motion to dismiss, courts “accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Thus, dismissal must be denied, ““unless it appears to a certainty that the plaintiff would not be entitled to relief under any set of facts that could be proved.”” *Brower v. County of Inyo*, 884 F.2d 1316, 1318 (9th Cir. 1989) (quoting *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986)). Disputes concerning facts alleged in the complaint are not a sufficient basis for dismissal under Rule 12(b)(6). *See id.*

The Adams County Sheriff’s Office asks to be dismissed as a party because “it lacks the capacity to sue or be sued under Washington law.” *See* Mot. to Dismiss at 2. In Washington, courts look to an entity’s enabling statute “to determine if a governmental body was intended to be a separate legal entity with the capacity to sue or be sued.” *Confederated Tribes & Bands of Yakama Nation v. Klickitat County*, No. 1:17-CV-3192-TOR, 2018 WL 8620412, at *3 (E.D. Wash. June 29, 2018) (citing *Foothills Dev. Co. v. Clark Cnty. Bd. of Cnty. Comm’rs*, 730 P.2d 1369, 1373 (Wash. Ct. App. 1986)). Thus, it is generally true that the proper defendant in a case alleging misconduct by a county department is the county. *See id.* (citing *Roth v. Drainage Imp. Dist. No. 5 of Clark Cnty.*, 392 P.2d 1012, 1013 (Wash. 1964)). That general rule does not apply, however, where, as here, the plaintiff seeks to enjoin conduct that implicates the county department’s exercise of authority conferred by the state, and over which the

1 county has expressly disclaimed supervisory authority. *See id.* at *4; Complaint
2 ¶ 4.40.

3 In *Confederated Tribes*, this Court reasoned that a county department, such
4 as a sheriff’s office, is capable of being sued where the department “derives and
5 exerts authority independent from the County.” *Confederated Tribes*, 2018 WL
6 8620412, at *4. The Court determined that the Klickitat County Sheriff’s Office
7 was a proper defendant for two reasons. First, the conduct at issue—arresting and
8 detaining individuals within Klickitat County—involved the exercise of state
9 authority, not county authority. *See id.* The Court observed that the Washington
10 State Constitution establishes the sheriff as the “locally elected . . . conservator
11 of the peace of the county,” with general duties for the office set forth in state
12 law. *See id.* (citing Wash. Const. art. XI, § 5, and Rev. Code Wash. § 36.28.010).
13 Second, Klickitat County “concede[d] that the county sheriff cannot be
14 compelled by the prosecuting attorney or the county” to take or refrain from
15 particular actions in carrying out its law enforcement duties. *Id.* The confluence
16 of those two factors indicated to the Court that the sheriff was exercising
17 “authority independent from the County,” such that the equitable relief plaintiffs
18 sought would have been effective only if it was applied directly against the
19 sheriff’s office, as a defendant. *See id.* (distinguishing cases where the relief
20 sought was for money damages under 42 U.S.C. § 1983).

21 The same reasoning in *Confederated Tribes* applies here. As in that case,
22 the disputed conduct here implicates a sheriff’s office’s exercise of its authority

1 to arrest and detain people, which is authority conferred by the State of
 2 Washington, not Adams County. *See* Wash. Const. art. XI, § 5; Rev. Code Wash.
 3 § 36.28.010. Furthermore, the State seeks only equitable remedies to curb the
 4 Sheriff’s Office’s abuse of that law enforcement authority, *see* Complaint ¶¶ 6.1-
 5 6.4, and alleges that the Adams County Board of Commissioners has expressly
 6 disclaimed any “supervisory authority over the operations of the Sheriff’s Office
 7 or over Sheriff Wagner.” *Id.* ¶ 4.40. That allegation, which must be accepted as
 8 true, is bolstered by additional allegations underscoring the extent to which
 9 Adams County has been unwilling or unable to bring the Adams County Sheriff’s
 10 Office into compliance with KWW, despite several years and multiple promises
 11 to the contrary. *See* Complaint ¶¶ 4.3–4.47. Because the Complaint squarely
 12 alleges that “the [Adams County] Sheriff’s Office derives and exerts authority
 13 independent from [Adams] County” when it engages in the conduct that allegedly
 14 violates KWW, it is appropriately named as a defendant in this action. *See*
 15 *Confederated Tribes*, 2018 WL 8620412, at *4.

16 The “[d]ecades of Washington jurisprudence” on which Defendants rely
 17 does not counsel a different outcome. *See* Mot. to Dismiss at 2. Those cases
 18 largely pre-date *Confederated Tribes* and, unlike this action, do not implicate the
 19 exercise of state authority by a county department or the confessed inability of
 20 the county government to control the operations of a Sheriff’s Office. *See id.* at
 21 2–3 (citing *Foothills Dev. Co.*, 730 P.2d at 1373; *Nolan v. Snohomish County*,
 22 802 P.2d 792, 796 (Wash. Ct. App. 1990); *Tahraoui v. Brown*, 185 Wash. App.

1 1051, 2015 WL 563806, at *7 (Wash. Ct. App. 2015), *Assenberg v. County of*
 2 *Whitman*, No. 2:14-CV-0145-TOR, 2015 WL 5178032, at *7 (E.D. Wash. Sept.
 3 4, 2015), and *Richmond v. Spokane Cnty. Sheriff's Off.*, No. 2:21-CV-00129-
 4 SMJ, 2021 WL 6202838, at *2 (E.D. Wash. Aug. 9, 2021)).

5 For instance, in *Foothills Development Co.* and *Nolan*, the Washington
 6 State Court of Appeals considered whether a board of commissioners or a county
 7 council could be sued. *See Foothills Development Co.*, 730 P.2d at 1369; *Nolan*,
 8 802 P.2d at 792. In both cases, the court held that they could not because the
 9 statute creating county legislative bodies clearly provides that they act solely “in
 10 the name of the county” to “prosecute and defend all actions for and against the
 11 county, and such other powers as are or may be conferred by law.” Wash. Rev.
 12 Code § 36.32.120(6). In effect, a county legislative body operates only on behalf
 13 of, and is indistinguishable from, the county. *See id.* Accordingly, the courts in
 14 each case held that a county legislative body is “not a separate entity that has the
 15 capacity to be sued,” *Foothills Dev. Co.*, 730 P.2d at 1374, and “[n]o purpose
 16 would be served by naming both the County and the County [legislative body]”
 17 as defendants. *Nolan*, 802 P.2d at 796. The same cannot be said of the Adams
 18 County Sheriff’s Office, which exercises arrest and detention authority conferred
 19 by the state with sufficient independence from Adams County that it may be
 20 named as a defendant. *See Confederated Tribes*, 2018 WL 8620412, at *4.

21 Although cases like *Tahraoui* and *Assenberg* at least involve sheriffs’
 22 offices exercising law enforcement authority, they also do not help Defendants

1 because neither court had occasion to consider the issue presented here: whether
 2 a sheriff's office is amenable to suit if the county government expressly disclaims
 3 the ability to supervise the very conduct a plaintiff seeks to enjoin. *See Tahraoui*,
 4 2015 WL 563806, *8 (noting that plaintiff "advance[d] no argument to dispute
 5 the contention that the sheriff's department should be dismissed"); *see also*
 6 *Assenberg*, 2015 WL 5178032, at *7 (noting that plaintiffs failed to respond to
 7 defendants' argument that defendants, including the sheriff's office, should be
 8 dismissed because they cannot be sued). Thus, it is little wonder that, when this
 9 issue arose, Judge Rice reached a different outcome. *Compare id.* (Rice, J.)
 10 (determining the Whitman County Sheriff's Department could not be sued), *with*
 11 *Confederated Tribes*, 2018 WL 8620412, at *4 (Rice, J.) (considering *Foothills*,
 12 *Tahrui*, and *Assenberg* and concluding that the Klickitat County Sheriff's Office
 13 could be sued given the county's representation that it had "no power" over the
 14 Sheriff); *see also id.* (distinguishing *Assenberg* on the ground that it "concerned
 15 liability for damages," which is a form of relief the county could fulfill on the
 16 sheriff's office's behalf without exercising control over its operations).

17 Finally, *Richmond v. Spokane County Sheriff's Office*—the lone case
 18 Defendants cite that post-dates *Confederated Tribes*—is distinguishable because
 19 of the nature of the sheriff's office conduct at issue and the nature of the relief
 20 sought. In that case, a former employee of the Spokane County Sheriff's Office
 21 sought damages for alleged workplace discrimination and wrongful termination.
 22 *See Richmond*, 2021 WL 6202838, at *1–2. Like *Tahraoui* and *Assenberg*, the

1 court in *Richmond* did not consider whether the county was able to exercise
2 sufficient control over the employment operations of the sheriff's office. *See*
3 *generally id.* Even if that argument had been raised, however, the outcome likely
4 would have been the same because the claims at issue concerned the sheriff's
5 office's conduct as an *employer*, which is squarely an exercise of county
6 authority. *See* Rev. Code Wash. § 36.01.010 (authorizing counties "to make such
7 contracts . . . as may be necessary to their corporate or administrative powers").
8 *Richmond*, thus, did not implicate the sheriff's role as "conservator of the peace
9 of the county," which is an exercise of state authority. *See Confederated Tribes*,
10 2018 WL 8620412, at *4. Moreover, the plaintiff sought only money damages,
11 which is a form of relief the county government could have implemented,
12 regardless of its ability to control the sheriff's office's operations. *See id.*

13 Courts in Washington have not adopted a bright line rule that prohibits
14 sheriff's offices from being named as defendants in every lawsuit. True, it will
15 not be appropriate to sue the sheriff's office when the conduct at issue reflects an
16 exercise of purely county authority, over which the county government assumes
17 responsibility to exercise supervision and can, if necessary, ensure compliance
18 with a court order, such as for an award of damages. But where, as here, a suit
19 seeks to enjoin the sheriff's office from unlawfully exercising state authority,
20 over which the county government disclaims any supervisory power, it is proper
21 for the sheriff's office to be named as a defendant. The Adams County Sheriff's
22 Office's motion should accordingly be denied.

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IV. CONCLUSION

The Court does not need to decide this Motion at all, because the case should first be remanded. Regardless, for the reasons set forth above, the Court should deny the Motion to Dismiss the Adams County Sheriff's Office. A proposed order accompanies this filing.

DATED this 24th day of April, 2025.

Respectfully Submitted,

NICHOLAS W. BROWN
Attorney General of Washington



EMILY C. NELSON, WSBA #48440
BENJAMIN SEEL, WSBA #61165
Assistant Attorneys General
Wing Luke Civil Rights Division
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
206-342-7744
emily.nelson@atg.wa.gov
benjamin.seel@atg.wa.gov

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

DATED this 24th day of April, 2025.



LOGAN YOUNG
Paralegal